



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

REDACTED DECISION

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Matter of: Newport News Shipbuilding and Dry Dock Company;
Combustion Engineering, Inc.; Sierra Nuclear Corporation

File: B-261244.2; B-261244.3; B-261244.4; B-261244.5

Date: September 11, 1995

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DIGEST

1. Award of single contract was permitted under solicitation which expressly stated that one or more contracts could be awarded; protests that offerors were misled to believe more than one award would be made are denied where contention is not reasonably supported.

2. Agency's management and operating (M&O) contractor performed appropriate price analysis under solicitation which contemplated award of fixed-price contract where M&O contractor determined that awardee's price was reasonable and realistic on the basis of its review of awardee's detailed pricing data related to its proposed approach and a comparison to the other proposals.

3. Protests challenging disparate treatment and improper evaluation of technical proposals are denied where evaluation record shows that evaluation of proposals was reasonable and consistent with the solicitation's evaluation criteria and alleged irregularity in the evaluation had an insignificant effect, if any, on the offerors' technical evaluation scores and would not affect the reasonableness of the award determination in light of the protesters' substantially higher prices (or substantially lower technical evaluation scores).

DECISION

Newport News Shipbuilding and Dry Dock Company, Combustion Engineering, Inc., and Sierra Nuclear Corporation protest the award of a subcontract to Westinghouse Electric Corporation under request for proposals (RFP) No. VA.CS.WLS.6/94.015. The RFP was issued by TRW Environmental Safety Systems, Inc. (TESS), as the management and operating (M&O) prime contractor to the Department of Energy (DOE), for the design of multi-purpose canister (MPC) systems for managing the storage, transportation, and disposal of spent nuclear fuel. Newport News and Combustion Engineering principally contend that the RFP required multiple awards and that TESS improperly evaluated offerors' price and technical proposals. Sierra Nuclear Corporation protests the evaluation of its proposal.

We deny the protests.

The RFP was issued on June 3, 1994, by TESS, as the M&O prime contractor for DOE, and set forth a 3-phase procurement scheme--Phase 1 involves the design and preparation of safety analyses for two MPC systems (large and small) and the preparation of alternative design studies and special technical reports (the subcontract awarded to Westinghouse for Phase 1 is the subject of the current protests); Phase 2 involves an option for Nuclear Regulatory Commission (NRC) certification of the Phase 1 designs, fabrication of scale model and prototype system components, and testing of the components; and Phase 3 involves an option for fabrication and delivery of the MPC systems and welding equipment.¹

The RFP provided for TESS' "award of one or more fixed-price subcontracts" for Phase 1, TESS' subsequent evaluation of design documentation and revised "proposal(s) [to] select one or more offerors to proceed" with Phase 2, and, concurrent with the performance of Phase 2, for TESS to evaluate designs and offers for production, fabrication, and delivery and "select not more than one of the

¹The RFP defined the MPC as a "sealed, metallic container maintaining multiple [spent nuclear fuel] assemblies in a dry, inert environment and overpacked [*i.e.*, in casks] separately and uniquely for various system elements of storage, transportation, and geologic disposal."

offerors to proceed to Phase 3 fabrication and delivery. The RFP advised that "[o]fferors not awarded initial subcontracts for Phase 1 are not eligible for participation in subsequent phases." The RFP provided that "TESS intends to award a subcontract(s) to the "[o]fferor(s) whose proposal meets all of the MPC systems' requirements and is judged to represent the best value to the Government" using the following stated evaluation criteria: technical factors (including design, certifiability, system operability, and fabricability); business and management factors (including corporate experience, personnel, management plans, and facilities); and price (including analysis of cost and price proposals for reasonableness and realism). For Phase 1, the business and management factor was more important than the technical factor and price was least important.²

The RFP, as amended, required offerors to submit firm, fixed prices for Phase 1, and fully supported estimated prices for Phases 2 and 3.³ Offerors were to calculate their proposed prices based on estimated quantities and types of spent nuclear fuel set forth in the RFP. Firm, fixed prices for Phases 2 and 3 were required from any successful Phase 1 offeror 9 and 24 months, respectively, after award of Phase 1. Proposed estimated prices for Phases 2 and 3 were to be evaluated under the Phase 1 evaluation to determine proposed total prices, however, award of Phase 1 was to be made in the amount of the firm, fixed prices for Phase 1 only without any obligation on the part of TESS to exercise the Phase 2 and 3 options.

Five offerors submitted proposals by October 24. TESS Resource Teams, each assigned an evaluation factor, evaluated the proposals. The Source Election Board (SEB) developed consensus ratings for each offeror's proposal based upon the Resource Team reports and assigned ratings to the proposals after applying the weights assigned to each factor. Price proposals were separately evaluated. All five proposals were included in the competitive range and discussions were held with the offerors. Best and final offers (BAFO) were received by February 21, 1995. After evaluation of the BAFOs, the SEB assigned "best value" rankings to the proposals, listed below in descending order, where "points" refers to the total evaluation points received under the technical and business and management factors out of a possible 100 points:

²For the Phase 2 option, the technical factor was to be most important, followed by business and management, and both factors were more important than price. For Phase 3, the total fixed price was to be determinative.

³The RFP, as originally issued, required firm, fixed prices for Phase 1 and guaranteed maximum prices for Phases 2 and 3; the guaranteed maximum prices requirement was deleted by amendment No. 0004 to the RFP, issued June 3, 1994, which added the requirement for estimated Phase 2 and 3 prices.

1. Westinghouse (with [DELETED] points, a Phase 1 proposed price of \$14,049,233, a Phase 2 and 3 proposed estimated price of [DELETED], and a total price of [DELETED];
2. Holtec International (with [DELETED] points, a Phase 1 proposed price of [DELETED], a Phase 2 and 3 proposed estimated price of [DELETED], and a total price of [DELETED];
3. Newport News (with [DELETED] points, a Phase 1 proposed price of [DELETED], a Phase 2 and 3 proposed estimated price of [DELETED], and a total price of [DELETED];
4. Combustion (with [DELETED] points, a Phase 1 proposed price of [DELETED], a Phase 2 and 3 proposed estimated price of [DELETED], and a total price of [DELETED];
5. Sierra (with [DELETED] points, a Phase 1 proposed price of [DELETED], a Phase 2 and 3 proposed estimated price of [DELETED], and a total price of [DELETED].)

The SEB briefed the Source Selection Authority (SSA) on its findings and the SSA forwarded a recommendation to DOE for award of Phase 1 subcontracts to Westinghouse and Holtec. DOE authorized award only to Westinghouse, finding that all other proposals "raise[d] certain technical, business management or cost concerns." TESS awarded a single subcontract for Phase 1 to Westinghouse on April 20, 1995. These protests followed.⁴

Newport News and Combustion initially challenge TESS' award of a single contract to Westinghouse on the basis that the RFP required multiple awards for Phase 1. Alternatively, the protesters contend that offerors were misled to believe that more than one award would be made. We disagree.

Initially, our review of the record shows that the terms of the RFP clearly notified all offerors that one or more awards could be made for Phase 1. The RFP also explained that an offeror only would be eligible for participation in the Phase 2 and 3 options if awarded a Phase 1 subcontract. The protesters thus should have

⁴Since this procurement is for a subcontract awarded by a DOE M&O prime contractor acting "by or for" the government, our review is limited to whether the procurement conformed to the federal norm reflected in the policy objectives of the federal procurement statutes and regulations. See Elma Eng'g, 70 Comp. Gen. 81 (1990), 90-2 CPD ¶ 390; Merrick Eng'g, Inc., B-238706.3, Aug. 16, 1990, 90-2 CPD ¶ 130.

known from the RFP that a single Phase 1 award could be made which, under the RFP's terms, would have limited eligibility for further participation in the procurement to one firm, as here. The protesters' challenges to the RFP's terms and the contentions that the single award to Westinghouse has created an improper sole source "situation" for Phases 2 and 3 are untimely.⁵ Protests of solicitation improprieties must be filed with our Office prior to the time set for receipt of initial proposals to be timely. 4 C.F.R. § 21.2(a)(1) (1995); see Continental Technical Servs. of Georgia, Inc., B-259681; B-259681.2, Apr. 19, 1995, 95-1 CPD ¶ 204.

Further, nothing in the record demonstrates, as the protesters contend, that communications from the M&O contractor or DOE before the issuance of the RFP and after the submission of proposals could have reasonably misled offerors. The challenged communications essentially involve the use of the word "awards" rather than "award(s)," but are not inconsistent with the RFP's stated terms providing for either one or multiple awards. The timing of the communications themselves shows that if the protesters in fact interpreted them to mean that multiple awards would be made, those offerors' reliance on that interpretation in preparing their proposals was unreasonable. See Essex Electro Eng'rs, Inc., B-238207; B-238207.2, May 1, 1990, 90-1 CPD ¶ 438. The subsequently issued RFP and its terms are controlling over any pre-RFP statements and any challenged statement made after the submission of proposals is irrelevant to the preparation of the proposals. In fact, [DELETED].⁶

⁵TESS, however, reports that it will acquire unlimited rights to the MPC systems designs under its subcontract with Westinghouse and that the protesters will have the opportunity to participate in any future competitive procurements for the MPC systems.

⁶In response to the protests of a single award, TESS reports that insufficient funding was available to support an additional award to either Newport News or Combustion. The record shows that most of the offerors' proposed prices exceeded TESS/DOE estimates. Although the protesters believe that TESS could have or should have sought additional funding in order to make multiple awards to their firms, we see no requirement for the M&O contractor to have done so. The award, as discussed below, was based upon a reasonable determination that Westinghouse's proposal offered the best value to the government and the single award was permitted under the terms of the RFP.

Newport News and Combustion next challenge the adequacy of TESS' evaluation of price proposals. The protesters contend that Westinghouse submitted a "low-ball" price proposal which should have been rejected or adjusted upward under a "most probable cost" analysis; the protesters contend that TESS improperly failed to perform an in-depth cost realism analysis of the proposals.

The RFP provided that proposals must include sufficient information, including a Standard Form 1411, and bases of estimates, with a cost breakdown of proposed prices and the method and basis of calculating the proposed prices, for TESS to verify "the basis for and reasonableness of the prices offered." The RFP provided that "[t]he cost and price proposal will not be point scored, assigned a numerical weight, or adjectivally rated" and that price proposals would be evaluated in accordance with the following:

"A. Cost/Price Analysis. Analysis of cost and price proposals will be performed in accordance with the [Federal Acquisition Regulation (FAR)] and [Department of Energy Acquisition Regulation (DEAR)].

"B. Cost/Price Realism. An unrealistic price proposal may be evidence of the [o]fferor's lack of understanding or poor understanding of the scope of work"

TESS found all of the offerors' proposed prices reasonable and realistic based upon the information contained in the proposals and did not adjust the proposed prices (except for correction of a mathematical error in Newport News's proposal which the protester does not challenge). Firms that submitted more detailed pricing data, as required by the RFP, however, were found by TESS to provide a higher degree of confidence in the reasonableness and realism of the proposed prices. Westinghouse's prices were found to be supported by a comprehensive breakdown of pricing components. The Westinghouse price proposal, which was [DELETED] included detailed line item bases of estimates, including applicable labor categories, hours and rates. Westinghouse also provided a detailed breakdown of tasks and descriptions of the work to be performed within each line item to support the firm's proposed prices.

Although Newport News, which offered the highest prices for all three phases of performance ([DELETED] percent higher than the awardee's), was requested several times during the procurement to provide detailed bases of estimates to support its and its team members' proposed prices, Newport News failed to submit additional pricing information. Instead, Newport News contends that its proposed pricing was accurate and adequately supported because it was "based primarily on actual, verifiable cost experience" with similar contracts. TESS found, however, that Newport News's costs remained, in part, unsubstantiated since without further explanation of the direct relationship of past costs on different contracts involving

many different components and approaches, TESS could not fully assess the reliability of the firm's proposed pricing under the current RFP.

Where, as here, the award of a fixed-price contract is contemplated, a proposal's "cost realism" is not ordinarily considered since a fixed-price contract places the risk and responsibility for contract costs and resulting profit or loss on the contractor, even if the solicitation states generally that prices will be evaluated for realism. Crestmont Cleaning Serv. & Supply Co., Inc.; Scott & Sons Maintenance, Inc.; Son's Quality Food Co., B-254486 *et al.*, Dec. 22, 1993, 93-2 CPD ¶ 336; Culver Health Corp., B-242902, June 10, 1991, 91-1 CPD ¶ 556. Under the FAR, the procuring agency in its discretion may provide for performance of a price analysis to determine that the proposed prices are fair and reasonable. FAR §§ 15.805-1 and 15.805-2; Family Realty, B-247772, July 6, 1992, 92-2 CPD ¶ 6. Here, the RFP did not provide for any specific type of cost or price evaluation, but rather generally referenced the price and cost analysis methods available under the FAR and DEAR. The M&O contractor, in its discretion, conducted a price analysis for this fixed-price contract. The FAR provides a number of price analysis techniques that may be used to determine whether prices are fair and reasonable, including a comparison of the prices received with each other. FAR § 15-805.2; Ogden Gov't Servs., B-253794.2, Dec. 27, 1993, 93-2 CPD ¶ 339. The depth of an agency's price analysis is a matter within the sound exercise of the agency's discretion. Research Management Corp., 69 Comp. Gen. 368 (1990), 90-1 CPD ¶ 352; Family Realty, *supra*.

We have no basis to conclude that TESS' price analysis and determination that Westinghouse's prices were reasonable and realistic were not in accordance with the RFP's terms and the federal norm.⁷ As discussed above, an in-depth cost realism (or as Newport News contends, a most probable cost) analysis was not required by the FAR, the solicitation, or the federal norm. FAR § 15.805; Ogden Gov't Servs., *supra*; Serv-Air, Inc.-Recon., 58 Comp. Gen. 362 (1979), 79-1 CPD ¶ 212.⁸ Since there were five offerors in the competitive range, TESS decided that

⁷We think the price evaluation terms in the RFP reasonably notified the offerors of the agency's discretion in determining the scope of the price evaluation to be performed--the RFP did not require a most probable cost analysis of the estimated prices for Phases 2 and 3 (these phases were not awarded under the Phase 1 fixed-price subcontract). Separate fixed-price awards may be made, under the option terms of the subcontract and the RFP, for Phases 2 and 3 at a future time and will then be subject to TESS' price/cost evaluations.

⁸Newport News specifically challenges as unreasonable TESS' conclusion that Westinghouse's [DELETED]. As TESS points out, however, the Westinghouse
(continued...)

adequate price competition existed and compared the price proposals internally and to each other--[DELETED]. The record supports the agency's view that each offeror's proposed price reasonably related to the differences in proposed approach. Finally, Westinghouse's price proposal was found to be comprehensive in supporting its costs.

The protesters next challenge the technical evaluation of the proposals. We will review an evaluation to ensure that it was reasonable and consistent with the stated evaluation criteria. See Space Applications Corp., B-233143.3, Sept. 21, 1989, 89-2 CPD ¶ 255. The determination of the merits of proposals is primarily a matter of administrative discretion which we will not disturb unless the evaluation was arbitrary or unreasonable. See Realty Executives, B-237537, Feb. 16, 1990, 90-1 CPD ¶ 288. The fact that a protester does not agree with the evaluation does not render the evaluation unreasonable. Logistics Servs. Int'l, Inc., B-218570, Aug. 15, 1985, 85-2 CPD ¶ 173. In a best value procurement, as here, where there is a substantial price difference between the protester's proposal and the awardee's proposal, the protester must show that its proposal should have been evaluated by the agency not just as essentially technically equal or close in technical merit, but as overall technically superior to the awardee's proposal. See Scheduled Airlines Traffic Offices, Inc., B-253856.7, Nov. 23, 1994, 95-1 CPD ¶ 33.⁹

The protesters assert numerous challenges to the M&O contractor's determination that Westinghouse's proposal offered the best value to the government. Many of the contentions simply are unsubstantiated; most of the contentions reflect the protesters' disagreement with the agency's evaluation but do not persuasively demonstrate that the evaluation was unreasonable. Each protester generally contends that it should have received additional points for the evaluation factors under which they failed to receive the maximum points available or, alternatively, that Westinghouse's proposal should have received fewer points under each evaluation factor. Our review of the procurement and protest records, including the RFP, the evaluation documents, the protesters' proposals, and the protest submissions of the parties, shows that TESS and DOE made a reasonably supported best value determination in awarding the subcontract to Westinghouse. Specifically, we think the minimal evaluation point differences among the offerors that would

⁸(...continued)

proposal expressly included [DELETED]. Also, lower [DELETED] costs, we believe, could also be reasonably related to Westinghouse's [DELETED]. The protester has not shown that the price evaluation was unreasonable.

⁹Although we have reviewed all of the protesters' numerous contentions regarding the technical evaluation of the awardee's and protesters' proposals, we discuss only a representative sample of those contentions in this decision.

result if the allegations of inconsistent evaluations in fact had merit, would have had an inconsequential effect on the award determination given the substantial price differences between the awardee's and protesters' proposals (or in the case of Sierra's protest, the substantial difference in technical scores).

First, Sierra protests the evaluation of its own proposal on principally two bases: that the evaluators improperly downgraded Sierra for lack of large, complex contract experience and for providing insufficient pricing data to support its proposed prices.¹⁰ Our review of the record supports the reasonableness of TESS' evaluation under the challenged technical evaluation area. Sierra states that had it known that large, complex contract experience was to be favored, [DELETED]. TESS defends its evaluation by pointing out that the RFP was clear, and thus the protester was on notice, that one of the most important evaluation factors for the business and management proposal was "corporate experience and success in performance on contracts of size and complexity similar to that being proposed." We agree that the RFP reasonably advised Sierra of the need for experience comparable to the work under the RFP. The protester does not rebut TESS' determination that Sierra's proposal [DELETED]. Our review of the proposal confirms the reasonableness of that determination; in fact, [DELETED], despite the matter having been raised with the protester during discussions.

Next, Newport News and Combustion challenge the evaluation of their own and Westinghouse's proposals under every evaluation factor stated in the RFP. Westinghouse received consistently high scores under each evaluation factor and its proposal was determined low risk based upon a conservative approach to meeting the RFP requirements substantiated by a very detailed, comprehensive proposal. Westinghouse received the highest total technical and business and management score and offered a price approximately [DELETED] percent lower than Newport News and Combustion, and only approximately [DELETED] percent higher than Sierra's proposal which received significantly lower evaluation scores. Although each proposal was evaluated by the Resource Teams on an individual basis, as called for in the source selection plan, the best value determination required a comparative evaluation of the proposals' relative technical merit which supported the award to Westinghouse. Our review of the evaluation record confirms the reasonableness of TESS' award to Westinghouse.

¹⁰Sierra does not rebut TESS' report that, despite the RFP's requirement for detailed supporting pricing data to verify the reasonableness of prices, Sierra failed to [DELETED]. Based on this record, we find reasonable the agency's conclusions that [DELETED]. Accordingly, this aspect of Sierra's protest is denied.

DESIGN

The most important technical evaluation factor was design. Although the offerors were all rated as satisfactory for design, the noted strengths and weaknesses of each proposal differed due to the different approaches proposed. Combustion's proposal, for instance, was downgraded for failing to provide as detailed a design proposal as requested by the RFP. Combustion protests that its design should have been rated higher because it surpassed the [DELETED] requirements of the RFP. The record shows that its proposal received credit for exceeding [DELETED]—as did the other offerors' proposals that exceeded the [DELETED] requirements. However, its proposal was reasonably downgraded for including many general statements of compliance with other RFP design requirements rather than demonstrating compliance and thus, additional credit was not warranted.

Under the design factor, Newport News's and Westinghouse's proposals had similar significant strengths, but Newport News's proposal also was evaluated as having a significant weakness regarding the [DELETED]. The protester states that it responded adequately to these concerns, but the record does not show that TESS' remaining concerns in the area did not justify the lower rating for design.

Newport News also contends that Westinghouse's proposal's design score should have been lowered for introducing a [DELETED] design that had not [DELETED]. The record, however, shows that the proposed [DELETED] was fully substantiated in Westinghouse's proposal and was reasonably rated as satisfactory. TESS correctly noted that although NRC certification is an important aspect of the overall evaluation of proposals, the RFP design subfactors did not specifically include NRC certification requirements. We also think TESS reasonably considered Westinghouse's presentation of supporting information showing that its [DELETED] was based upon an existing, effective design, and thus, TESS' technical rating of Westinghouse's proposal under design was reasonable.

CERTIFIABILITY

Regarding the evaluation of certifiability, this RFP evaluation factor contemplated review of the degree of confidence presented by the proposals for timely design certification by NRC (the proposal of NRC approved quality assurance programs and the offer of products or components previously certified by the NRC would warrant higher scores under the evaluation factor). Westinghouse's proposal was rated slightly higher than Newport News's and Combustion's proposals under this factor and, we think, the record adequately supports the ratings. Newport News and Combustion both [DELETED]. Although Westinghouse was cited for a significant weakness concerning [DELETED] the substantial detail in the certifiability section in its proposal, which demonstrated considerable knowledge of the NRC certification process and offered a proactive, attentive approach to meeting

NRC requirements, reasonably led TESS to consider Westinghouse's approach to be an acceptable risk under the certifiability criterion.

Newport News's proposal was assigned a significant weakness under the certifiability factor for failing to propose the use of [DELETED]--which are used in previously NRC certified containers. Newport News also failed to adequately respond to TESS' questions regarding NRC's ongoing concerns regarding the firm's current NRC application for certification of its product. We find unpersuasive Newport News's argument that its proposal should have been rated higher than Westinghouse's for certifiability on the basis that its NRC application has already been filed--being the first to file at NRC is not necessarily demonstrative of timely success in the NRC certification process.

Further, neither the record nor Combustion's disagreement with the evaluation determinations warrants a change in Combustion's certifiability score. Combustion failed to provide the detailed information required by the RFP to support its proposal. Specifically, although Combustion states that its product has been [DELETED], the firm failed to show that it fully understood the NRC certification process and failed to discuss in sufficient detail in its proposal its anticipated NRC rulemaking time frames. We believe it was incumbent upon Combustion to provide supporting information in this regard to include, for instance, additional information [DELETED] to support its assertion of its ability to timely obtain NRC certification of its product and to further substantiate the firm's familiarity with NRC requirements. TESS' conclusions are adequately supported on the record.

SYSTEM OPERABILITY

System operability was the third important technical factor and, the record shows, represents an important distinguishing factor among the proposals. Westinghouse's proposal under this factor was found by TESS to provide an "excellent presentation of reliability and supportability that indicated a thorough understanding of their applicability in the design of equipment and components." The proposal was well-received for showing a good understanding of system safety and efficiency, and for providing good interchangeability of parts. Although some concern was raised as to the [DELETED], the offeror did provide details for an alternative method of [DELETED] that minimized the earlier concern.

Newport News's proposal, on the other hand, which received no significant strengths for system operability, was downgraded under this factor for its significant weakness in failing to meet the RFP requirement for the proposed [DELETED]. Newport News's proposal was also downgraded slightly for a lack of detail in its proposal for system operability and the firm provides no basis to question that finding. The firm's contention that TESS should have realized that, since the firm's proposal stated that the firm had built other canisters, the required

processes and equipment were in place, is unreasonable. It is the offeror's responsibility to submit an adequately written proposal. See INFOCUS Communications, B-256244, May 31, 1994, 94-1 CPD ¶ 330.

Our review of the record also shows that Combustion's proposal was reasonably downgraded for system operability since, despite being told during discussions that TESS had concerns about [DELETED], the firm failed to provide adequate explanation to alleviate the concerns.¹¹

BUSINESS AND MANAGEMENT

Newport News's proposal received the highest total score under the business and management evaluation factors; Westinghouse's proposal was rated [DELETED] (by a minimal difference in score) and Combustion's proposal was rated [DELETED] (by a more substantial margin). Again, Combustion's proposal's main weakness, which is confirmed by our review of the record, was a lack of detail; for example, Combustion offered insufficient information to show [DELETED]. Combustion's contention that the SSA wrongfully failed to accept the Resource Team's higher ratings for its corporate experience and management plan is not persuasive--the SSA was entitled to, and reasonably did, under each respective factor, take into account

¹¹The protesters also challenge the evaluation of proposals under the fabricability factor, the least important technical evaluation factor. Westinghouse again submitted a more detailed technical proposal than the other offerors which reasonably rated highly for [DELETED]. Newport News's proposal, on the other hand, proposed [DELETED] requiring special tooling, but failed to address the process in detail, and thus reasonably was assessed as presenting some risk. Combustion, despite being told of the specific concerns of the M&O contractor regarding a perceived lack of detail in its proposal, failed to adequately explain what Combustion concedes was a [DELETED]. We see no impropriety in the evaluation here.

the proposal's lack of information regarding [DELETED] and justifiable concerns about the [DELETED].¹² See Sarasota Measurements & Controls, Inc., B-252406.3, July 15, 1994, 94-2 CPD ¶ 32.

Newport News essentially attempts to reevaluate its own business and management proposal compared to Westinghouse's proposal in its protest submissions and argues that if it received the full 10 points available under each evaluation factor (instead of the 9 points it received), and Westinghouse's score was lowered under any or all of the business and management evaluation factors, Newport News's proposal would be found technically superior. Newport News contends that the evaluators improperly credited the Westinghouse proposal under the corporate experience factor for the experience of certain key personnel whose experience was separately evaluated under the personnel evaluation factor. The corporate experience factor required offerors to show "experience and success in performance on contracts of size and complexity similar to that being proposed" and the "degree to which the [o]fferor has demonstrated success in designing and fabricating systems . . . certified by the [NRC]" The record indicates that TESS evaluated Westinghouse's corporate experience to include some NRC certification experience

¹²Combustion also contends that TESS improperly permitted Westinghouse to take exception to material RFP requirements, however, the RFP permitted certain exceptions where adequately supported by the offeror--Combustion has not persuasively shown that any such exception rendered Westinghouse's proposal unacceptable in any way. Combustion also contends that TESS engaged in improper post-BAFO discussions with Westinghouse regarding the terms of the RFP's indemnification clause (to which Westinghouse had taken exception in its BAFO, but which was subsequently agreed to by the awardee). We see no basis to conclude, however, that, even if these acts constituted improper post-BAFO discussions, Combustion has suffered competitive prejudice as a result. Given the reasonableness of the technical and price evaluations, and the fact that Combustion does not contend--nor is it likely (since the firm only minimally lowered its price in its BAFO)--that it would have lowered its price the more than [DELETED] percent necessary to be in line for award if another round of discussions was conducted, the record does not show the requisite element of prejudice to sustain the protest on this ground. See Maritime Management, Inc., B-260311.2; B-260311.3, July 11, 1995, 95-2 CPD ¶ 11; IT Corp., B-258636 *et al.*, Feb. 10, 1995, 95-1 CPD ¶ 78.

To the extent Combustion protests, for the first time in its July 17 comments in response to the agency's report on the protest, that TESS failed to meaningfully discuss with the firm its concerns regarding Combustion's proposed management plan, the challenge is untimely since it was not filed within 10 working days of Combustion's receipt of the agency report which contained TESS' evaluation record. 4 C.F.R. § 21.2(a)(2).

of its subcontractor's key personnel. Even if the protester is correct in this aspect of its protest, however, the record shows that Westinghouse provided strong support for its own experience in projects of similar size and complexity and some relevant independent NRC certification experience to still warrant close to the corporate experience score received—at best, only a minimal difference in the point scores under this factor might have been warranted which, contrary to Newport News's contention, simply could not have made its proposal so technically superior to Westinghouse's proposal to reasonably question the agency's best value determination in light of Newport News's substantially higher price.¹³

The protests are denied.

Robert P. Murphy
General Counsel

¹³The protests raise numerous other issues either not proper for our review or for which the protesters fail to provide sufficient support to warrant further discussion, e.g., the alleged use by the awardee in its proposal of another offeror's proprietary information, allegations of organizational conflict of interest on the part of TESS and that TESS intends to use funding and the offerors' proprietary information for its own financial gain, and allegations that the single award determination was based upon NRC direction that multiple awardees' applications for certification would be too burdensome for that agency.